

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

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FEDERAL COMMUNICATIONS COMMISSION
COMMUNICATIONS DIVISION

In the Matter)
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Allocation of Spectrum Below) ET Docket No. 94-32
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To: The Commission

COMMENTS OF HOME BOX OFFICE

Home Box Office, a Division of Time Warner Entertainment Company, L.P. ("HBO"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submits its comments in response to the Notice of Proposed Rulemaking ("Notice"), released in the above-captioned proceeding on November 8, 1994.¹

In the Notice, the Commission is proposing to allocate to various radio communications services 50 megahertz ("MHz") of spectrum recently identified by the Department of Commerce as available for transfer from Federal Government use to private use.² HBO's comments are limited to that portion of the Notice

¹ FCC 94-272, released November 8, 1994.

² The Department of Commerce's action was taken pursuant to the Omnibus Budget Reconciliation Act of 1993, Pub.L. No. 103-66, 107 Stat. 312 (August 10, 1993), which directed the Secretary of Commerce to identify, over time, 200 MHz of spectrum used by the Federal Government which would be transferred to the FCC's jurisdiction for use by the private sector.

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wherein the Commission suggests that it might relocate the Multipoint Distribution Service ("MDS") to some of the new spectrum and reallocate part of the MDS spectrum (2150-2160 MHz) for personal communications services ("PCS") use.³ For the reasons set forth herein, HBO strongly objects to this MDS relocation/reallocation proposal.

I. Background/Interest of HBO

Since the MDS service was created in 1974, MDS channels 1 and 2 (and channel 2A in markets higher than the top 50) have used the 2150 - 2160 MHz frequencies. In combination with other frequency allocations that have been made in recent years, MDS channels 1 and 2 have become a vital part of the "wireless cable" distribution technology for video programming.

In its recent First Report on the status of competition in the market for delivery of video programming,⁴ the Commission recognized that wireless cable was emerging as an effective competitor to other television distribution systems. The Commission observed that, since 1990, the number of wireless cable systems had grown from 50 to 143 and the number of wireless cable subscribers had grown from 300,000 to 550,000.⁵ The Commission also recognized that the wireless cable industry was finally achieving a favorable reception in the financial markets

³ Notice at ¶ 14.

⁴ First Report in CS Docket No. 94-48, FCC 94-235, released September 28, 1994.

⁵ Id. at ¶ 79.

and that the "access to public financing, as well as increasing credibility with banks, may have helped to alleviate one of the major problems that has confronted the wireless industry."⁶

HBO began using MDS channel 1 for distribution of its programming in 1974.⁷ Since then, HBO has greatly expanded its reliance on wireless cable technology for the local distribution of the HBO and Cinemax programming services. Currently, HBO uses wireless cable for local distribution in approximately 75 markets and is expanding its use by approximately two to three markets per month. A significant number of the total wireless cable subscribers are also subscribers to HBO's services.

Due to HBO's reliance on wireless cable technology, it opposes the relocation of MDS channels 1 and 2 as proposed in the Notice. This relocation would severely disrupt existing services, place unnecessary operational and significant financial burdens on wireless cable operators and retard substantially the recent successes of wireless cable operators in attracting adequate financing to expand and improve their operations. To avoid these serious adverse consequences to a rapidly expanding wireless cable industry, the Commission should conclude promptly and decisively that the relocation of MDS channels 1 and 2 is not in the public interest.

⁶ Id. at ¶ 80.

⁷ HBO became the customer of record of New York City's MDS Channel 1 in 1974. Today, HBO serves approximately 25,000 subscribers over this facility.

II. The Proposed Relocation Would Cause Significant Disruption to Wireless Cable Operators, Subscribers and Programmers

Irrespective of the fact that wireless cable operators would be entitled to reimbursement for their costs of relocating to alternative spectrum,⁸ the process of relocating would create confusion and cause significant disruption to an established and rapidly growing base of operators, subscribers and programmers. At a minimum, the proposed relocation would require retuning of MDS channels 1 and 2 transmitters and subscriber downconverters. In some instances, new transmitters and antennas would be required at the MDS transmission sites. Moreover, based on HBO's research, it appears that a large number of the subscriber downconverters currently in use could not be retuned, but instead would require a complete equipment change-out.⁹ In any event, every retune or change-out of a subscriber's equipment would require a site visit by qualified personnel. Literally hundreds of thousands of on-site visits would have to be scheduled and completed in order for the relocation to be accomplished.

The effort involved in implementing the proposed relocation would be especially burdensome for a distribution technology that is just emerging as a viable competitor and beginning to gain the

⁸ Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Red 6886 (1992).

⁹ The Commission would have to relocate MDS channels 1 and 2 to noncontiguous parts of the spectrum (6 MHz in each of the 2300-2310 and 2390-2400 MHz bands) in order to accommodate the two channels that would be displaced by the reallocation of 10 MHz at 2150-2160. Notice at note 28.

respect of the viewing public, programmers and the financial community. The costs of the relocation aside, the intangible implications of requiring wireless cable operators to disrupt their businesses at this critical period simply cannot be justified. Such a result would be contrary to the goals of Congress and the Commission to promote "the emergence of effective competition through the entry of alternative distribution technologies."¹⁰

III. Conclusion

In furtherance of its policies to promote the development of alternative video distribution technologies, the Commission should proceed no further with its proposed relocation of MDS channels 1 and 2.

Respectfully submitted,

HOME BOX OFFICE, a Division of Time
Warner Entertainment Company, L.P.

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¹⁰ First Report at ¶ 6.